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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,427	02/21/2001	Makoto Tobita	4468-013	5244
7590	12/02/2004			
LOWE HAUPTMAN GOPSTEIN GILMAN & BERNER, LLP Suite 310 1700 Diagonal Road Alexandria, VA 22314			EXAMINER PEZZLO, JOHN	
			ART UNIT 2662	PAPER NUMBER

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/788,427

Applicant(s)

TOBITA ET AL.

Examiner

John Pezzlo

Art Unit

2662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Priority***

Applicants are claiming priority to two Japanese Applications:

2000-050473 filed 22 February 2000

2000-024213 filed 31 January 2001

Neither of the documents is in the case (not scanned in IFW).

### ***Specification***

The disclosure is objected to because of the following informalities: The specification has specific references to the claims on pages 2 and 3. The references to the claims need to be removed and particular elements of the claims need to be inserted into the specification. Appropriate correction is required.

### ***Claim Objections***

Claims 1 and 6-8 are objected to because of the following informalities: The claims state "a program execution means for designating a data to be processed out of the data". It is confusing as to the interpretation of a data within the data, especially in the other claims, which depend from the independent claims. For instance, claim 2 states, "further comprising a data

Art Unit: 2662

output means that outputs the designated data out of the data". Since "the data" in claim 2 could refer to the raw data collected or just the filtered data, the independent claims need to further define "a data" to use a different term or additional terms to distinguish "a data" (the filtered data) from "the data" (the raw data). Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

I. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by McCreery et al. (US 5,787,253) hereinafter McCreery.

1. Regarding claims 1 and 6-8 – McCreery discloses a data collection means for acquiring data including packets, refer to Figure 2 (callout 230) and column 2 lines 10 to 15.

McCreery discloses a program execution means for designating a data to be processed out of the data, refer to Figures 2 (callout 220) and 4c (callouts 324 and 344) and Figure 5a and Figure 9 and column 2 lines 15 to 25 and column 2 lines 50 to 65 and column 8 lines 23 to 50.

McCreery discloses executing a program to perform a specific processing with respect to the designated data, refer to Figure 4c (callouts 324 and 346) and column 7 lines 33 to 50.

McCreery discloses wherein the program execution means operates while the data collection means acquires the data, refer to column 2 lines 25 to 45 and column 3 lines 1 to 10 and column 7 lines 33 to 50.

2. Regarding claim 2 – McCreery discloses further comprising a data output means that outputs the designated data out of the data acquired by the data collection means to the program execution means, refer to Figure 2 (callouts 230 and 220).

3. Regarding claim 3 – McCreery discloses wherein the program execution means generates a log of the data (a raw transaction data buffer), refer to Figure 2 (callout 210) and column 2 lines 25 to 30 and column 5 lines 30 to 35.

4. Regarding claim 4 – McCreery discloses wherein the program execution means displays an execution result, refer to Figure 3 (callout 304) and column 7 lines 5 to 15 and column 7 lines 59 to 67.

5. Regarding claim 5 – McCreery discloses further comprising a display means for displaying the data acquired by the data collection means, refer to Figure 3 (callout 304) and column 7 lines 5 to 15 and column 7 lines 59 to 67.

### ***Conclusion***

Art Unit: 2662

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. Chandler (US 6,592,822 B1) discloses multi-analyte diagnostic system and computer implemented process for same.
2. I'Anson et al. (US 5,347,524) discloses a protocol analyzer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pezzlo whose telephone number is (571) 272-3090. The examiner can normally be reached on Monday to Friday from 8:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou, can be reached on (571) 272-3088. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C.

or faxed to:

(703) 872-9306

For informal or draft communications, please label "PROPOSED" or "DRAFT"

Hand delivered responses should be brought to:

Jefferson Building

Application/Control Number: 09/788,427  
Art Unit: 2662

Page 6

500 Dulany Street

Alexandria, VA.

John Pezzlo

19 November 2004

A handwritten signature in black ink, appearing to read 'J. Pezzlo', with a stylized flourish at the end.

**JOHN PEZZLO**  
**PRIMARY EXAMINER**